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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

NEXTGEN INNOVATIONS, LLC.

Case No. 21-cv-07477-NC

Plaintiff,

**JOINT NOTICE OF MOTION AND  
MOTION TO STAY PENDING *INTER  
PARTES* REVIEW OF THE  
ASSERTED PATENTS**

v.  
II-VI, INC. and FINISAR CORPORATION,

Hearing Date: November 3, 2021

Hearing Time: 10:00 a.m.

Location: Robert F. Peckham Federal  
Building  
4<sup>th</sup> Floor, Courtroom 5  
280 South 1<sup>st</sup> Street  
San Jose, California 95113

Judge: Hon. Nathanael M. Cousins

1                   **NOTICE OF MOTION AND MOTION**

2                   **PLEASE TAKE NOTICE** that on November 3, 2021, at 10:00 a.m., or as soon thereafter  
 3 as counsel may be heard, in Courtroom 5 of the United States District Court for the Northern  
 4 District of California, San Jose Division, located at Robert F. Peckham Federal Building, 280 South  
 5 1<sup>st</sup> Street, San Jose, California 95113, Plaintiff NextGen Innovations, LLC (“NextGen”) and  
 6 Defendants II-VI, Inc. (“II-VI”) and Finisar Corporation (“Finisar”) (collectively, “Defendants”)  
 7 will and hereby do move this Court for an order staying this case pending the outcome of the *inter*  
 8 *partes* reviews (“IPR”) of U.S. Patent Nos. 8,238,754 (“the ’754 Patent”); 8,958,697 (“the ’697  
 9 Patent”); 9,887,795 (“the ’795 Patent”); 10,263,723 (“the ’723 Patent”); 10,763,958 (“the ’958  
 10 Patent”); 10,771,181 (“the ’181 Patent”) (collectively, the “Asserted Patents”).

11                  This case was filed in the Eastern District of Texas on October 30, 2020, and was served on  
 12 Defendants in December of that year. ECF No. 1. Shortly thereafter, Defendants moved to transfer  
 13 the case to this District (ECF No. 11), and the motion was granted on July 2, 2021. ECF No. 38.  
 14 The transfer of the case took place on September 28, 2021. ECF No. 39. In the meantime, on  
 15 August 6, 2021, Defendants filed petitions to institute IPR on the ’795, ’723, and ’181 Patents. On  
 16 September 10, 2021, Defendants filed petitions to institute IPR on the ’697 and ’754 Patents. The  
 17 remaining petition to institute IPR on the ’958 Patent is expected to be filed this week. The parties  
 18 have agreed that a stay pending resolution of these IPR petitions is warranted.

19                  Whether to stay litigation generally involves a consideration of three factors: (1) “whether  
 20 discovery is complete and whether a trial date has been set;” (2) “whether a stay will simplify the  
 21 issues in question and trial of the case;” and (3) “whether a stay would unduly prejudice or present  
 22 a clear tactical disadvantage to the non-moving party.” *In re Cygnus Telecomms. Tech., LLC,*  
 23 *Patent Litig.*, 385 F. Supp. 2d 1022, 1023 (N.D. Cal. 2005) (citations omitted). Each factor supports  
 24 a stay in this case. First, this case remains in its infancy with almost no discovery exchanged, and  
 25 no trial date. Second, a stay will promote efficient resolution of this dispute and prevent the  
 26 needless waste of judicial and party resources litigating issues that may be eliminated or altered,  
 27 particularly in view of the stipulation Defendants filed in the IPR proceedings regarding its  
 28 agreement to “not present any ground of invalidity of [the Asserted Patents] in the NDCA Litigation

1 that [were] raised or reasonably could have been raised in the as-filed Petition.” *See, e.g.*, Ex. A,  
2 Defendants’ IPR Stipulation (Ex. 1030 in IPR2021-01358). Third, because NextGen has agreed to  
3 the requested stay, there cannot be any argument that the stay would unduly prejudice or present a  
4 clear tactical disadvantage to NextGen.

5 In view of the foregoing, the parties jointly request that the Court enter an order staying this  
6 case pending IPRs.

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1 Dated: October 27, 2021

Respectfully submitted,

2 By: /s/ Erik J. Halverson

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22 \*Not admitted in Virginia

## **ATTESTATION**

I, Erik J. Halverson, an ECF user whose ID and password are being used to file this **JOINT NOTICE OF MOTION AND MOTION TO STAY PENDING INTER PARTES REVIEW OF THE ASSERTED PATENTS**, in compliance with Civil Local Rule 5-1(i)(3), attest that all other signatories listed, and on whose behalf the filing is submitted, concur to the filing's content and have authorized the filing.

Date: October 27, 2021

/s/ Erik J. Halverson  
Attorney